United States Court of Appeals

for the Second Circuit

APPENDIX

74-2138

United States Court of Appeals
For the Second Circuit

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs-Appellants,

—against—

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, MORTON B. WALLACH, individually and as Director of Brooklyn State Hospital, CHARLES J. RABINER, individually and as Director of Hillside Medical Center, and MARVIN LIPKOWITZ, individually and as Director of Gr..e Square Hospital,

Defendants-Appellees.

On Appeal From the United States District Court for the Eastern District of New York

JOINT APPENDIX

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Hygiene, and Morton B. Wallach,
Director of Brooklyn State Hospital

Of Counsel: Maria L. Marcus
Assistant Attorney-General

PAGINATION AS IN ORIGINAL COPY

APPEND

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Trans

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, MORTON B. WALLACH, individually and as Director of Brooklyn State Hospital, CHARLES J. RABINER, individually and as Director of Hillside Medical Center, and MARVIN LIPKOWITZ, individually and as Director of Gracie Square Hospital,

Defendants.

74 C 34

CLASS ACTION COMPLAINT

74 Civ. _____

74 C 584

Plaintiffs, through their attorneys, allege:

Jurisdiction

1. This is a class action civil rights suit for declaratory and injunctive relief pursuant to 42 U.S.C. 1983 and 28 U.S.C. 1343, 2201 and 2202, in which plaintiffs allege they have been denied constitutional rights arising under the First, Fourth, Ninth and Fourteenth Amendments to the United State Constitution.

Parties

2. Janet Gotkin (formerly Janet Susan Lass) and Paul Gotkin are adult citizens of the United States. They were married on December 25, 1966 and reside at 44 Park Trail, Croton-on-Hudson, New York, 10520. They have a two year old daughter.

3. Defendant Alan D. Miller is Commissioner of the New York State Department of Mental Hygiene, and maintains an office at 2 World Trade Center, New York, New York.

4. Defendant Morton B. Wallach is Director of Brooklyn State Hospital ("Brooklyn State"), 681 Clarkson Avenue, Brooklyn, New York 11203.

5. Defendant Charles J. Rabiner is Director of Hillside Medical Center ("Hillside"), Glen Oaks, New York, 11004.

6. Defendant Marvin Lipkowitz is Director of Gracie Square Hospital ("Gracie Square"), 420 East 76 Street, New York, New York, 10021.

7. At all times relevant herein, defendants have acted, or refused to act, under color of state law.

Individual Causes of Action

8. On several occasions, beginning in 1962 and ending in 1970, plaintiff Janet Gotkin was a patient at Brooklyn State, Hillside, and Gracie Square.

9. On each occasion, she was admitted as a voluntary patient pursuant to the applicable provisions of the New York State Mental Hygiene Law.

10. The precipitating cause of many, though not all, of these voluntary hospitalizations was a series of suicide gestures, threats and attempts, some of which were serious and some of which were not, beginning in approximately 1962 and ending in September, 1970.

11. Since September of 1970 plaintiff Janet Gotkin has not threatened or attempted suicide, and has led a perfectly normal life. She has worked, borne a child, and traveled extensively in Europe.

12. Since September of 1970, plaintiff Janet Gotkin has not been hospitalized or treated for mental disorder, either as an in-patient or an out-patient.

13. Plaintiff Janet Gotkin's education was interrupted by hospitalization. She has completed one year at Smith College and is now enrolled at the College of New Rochelle, from which she expects to receive a B.A. degree in the summer of 1975.

14. In recent years, plaintiff Janet Gotkin has frequently been invited, often for financial consideration, to lecture to various schools and organizations on topics such as "Women and Psychology," "The Sociology of Psychiatry," and her personal experiences when she was a mental patient. She has lectured, for example, at the College of New Rochelle, Grasslands Medical School, Mercy College, New Paltz College, and the Ethical Culture Society of Westchester.

15. The questions from the audiences at those lectures have frequently been hostile, but plaintiff Janet Gotkin has handled those questions without difficulty, and has developed the reputation of a poised and knowledgeable speaker.

16. In April of 1973, plaintiffs Janet Gotkin and Paul Gotkin, as co-authors, signed a contract with Quadrangle Books, a division of the New York Times, to write a book about Janet Gotkin's involvement with psychiatry.

17. The consideration for that contract was an $8,000 advance against royalties, of which $6,000 has been paid to plaintiffs Janet Gotkin and Paul Gotkin, the balance to follow shortly.

18. Plaintiffs have now completed the final draft of the manuscript, consisting of approximately 900 typewritten pages, and have submitted the final draft to Quadrangle.

19. It is expected that the book will be published in late 1974 or early 1975.

20. Much of the manuscript consists of a narrative description of plaintiff Janet Gotkin's admissions to Brooklyn State, Hillside, and Gracie Square, and her experiences in those hospitals.

21. Plaintiffs Janet Gotkin and Paul Gotkin want and need to inspect plaintiff Janet Gotkin's hospital records at Brooklyn State, Hillside and Gracie Square in order to verify factual information (dates of admission, drug dosages, diagnoses, dates of shock treatments, test results, etc.), and to compare the hospitals' versions of incidents described in the manuscript with plaintiff's recollection and account. It is important that plaintiffs examine the records in the near future so they can correct or supplement the manuscript before it is transmitted to the printer.

22. On October 31, 1973, plaintiff Janet Gotkin wrote to Brooklyn State, Hillside and Gracie Square requesting access to her records as a matter of "supreme importance."

23. By letters dated November 14, 1973 and March 14, 1974, Brooklyn State and Hillside denied that request. Gracie Square has ignored the request and has forwarded no reply.

24. On information and belief, the refusal by Brooklyn State, Hillside and Gracie Square to allow plaintiffs Janet Gotkin and Paul Gotkin access to Janet Gotkin's hospital records was not based on an individualized determination of plaintiffs' interest in examining the records, or suitability to examine the records, but was based on statewide and hospital rules, regulations, customs, policies and practices that have been established, continued or enforced by defendants, under which no former patient may ever be allowed access to his or her own hospital record.

25. On information and belief, plaintiff Janet Gotkin's records at Brooklyn State, Hillside and Gracie Square may be released to third parties, in some cases only with her consent and in other cases without, but because of defendants' rules, regulations, customs, policies and practices, may not be released to her, even though her interest in examining those records is as great or greater than the interest of parties to whom the records may be released.

26. Because of the foregoing, plaintiffs have been denied their constitutional rights under the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution.

Class Action Cause of Action

27. Plaintiffs repeat and reallege paragraphs 1 through 7 hereof.

28. On information and belief, plaintiffs are representative of a large class of person, consisting of former patients of institutions operated or regulated by defendants and their agents, who have requested and been denied access to their own hospital records.

29. On information and belief, there are questions of law and of fact common to the class, plaintiffs' claims are not antagonistic to the claims of the class; and plaintiffs will adequately represent the interests of the class.

30. On information and belief, defendants and their agents have established, continued or enforced rules, regulations, customs, policies and practices under which all former patients of hospitals operated or licensed by the New York State Department of Mental Hygiene are denied the right to examine their own hospital records, without regard to the individual circumstances of each case.

31. On information and belief, pursuant to this blanket prohibition, many former patients of such hospitals have been denied the right to examine their own hospital records.

32. On information and belief, the hospital records of former patients of such hospitals may be released, and have been released, to third parties, in some cases only with the former patient's consent and in other cases without, but because of defendants' rules, regulations, customs, policies and practices may never be released to any former patients, even though their interest in examining those records is as great or greater than the interest of parties to whom the records may be released or have been released.

33. On information and belief, such records often contain factually inaccurate statements.

34. On information and belief, former patients are frequently required, as a condition of employment, of obtaining insurance, etc., to sign release forms authorizing third parties, including governmental employers, to examine their hospital records, even though they do not know what information their records contain, and lacking knowledge, are unable to correct or rebut any factually inaccurate or misleading statements contained in their records.

35. Because of the foregoing, the members of the class have been denied their constitutional rights under the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution.

WHEREFORE, plaintiffs respectfully request that this Court:

1. Determine that this action may proceed as a class action;

2. Issue a judgment declaring that defendants' rules, regulations, customs, policies and practices, under which all former patients are denied the right to examine their own hospital records, are unconstitutional;

3. Issue a preliminary and permanent injunction enjoining defendants and their agents and successors from enforcing said rules, regulations, customs, policies and practices;

4. Issue a judgment declaring that all former patients have the right upon demand to examine and copy their own hospital records unless within a reasonable time after such demand the person having custody of the records applies for and thereafter obtains a court order denying access to the records;

5. Issue a preliminary and permanent injunction requiring defendants immediately to allow plaintiffs to inspect

and copy plaintiff Janet Gotkin's complete hospital records at Brooklyn State, Hillside and Gracie Square; and

6. Grant plaintiffs the costs of this action, and such other and further relief as to the Court seems just and proper.

Dated: New York, New York
April 12, 1974

BRUCE J. ENNIS
New York Civil Liberties Union and Mental Health Law Project
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New York, N.Y. 10011
(212) 924-7800

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(212) 924-7800

DEPARTMENT OF JUSTICE
FORM NO. USM-303
(REV-10-19-63)
FPI LC 4-73-4M BKS.-7036

RECEIPT

U. S. MARSHAL

District of

A 90-100

Date 4/10/74, 19

Received of

MARSHAL'S NO.	TITLE OF CASE	PROCESS NO.	PROCESS TYPE	AMOUNT

Received by

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DEFENDANT

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AT

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NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above)

☐ A person of suitable age and discretion then abiding in the defendant's usual place of abode.

ADDRESS (Complete only if different than shown above)

FEE (If applicable)

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MILEAGE

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DATE/ST OF ENDEAVOR (Use Remarks if necessary)

DATE OF SERVICE

TIME AM PM

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$ | $

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REMARKS

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----------X

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, [illegible] B. WALLACH, individually and as Director of Brooklyn State Hospital, CHARLES J. [illegible], individually and as Director of Hillside Medical Center, and [illegible] individually and as Director of Creedmoor Hospital,

Defendants.

----------X

NOTICE OF MOTION

74 C 594

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavits of MARTA L. MARCUS and ALBERT S. WEINSTEIN and upon all the proceedings previously had herein, the undersigned will move this Court at a term for motions to be held before the Hon. Anthony J. Travia in Courtroom 9 at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York on the 24th day of May, 1974 at 10:00 in the forenoon or as soon thereafter as counsel can be heard for an order (1) granting summary judgment pursuant to the Fed. R. Civ. Proc. 56(b), 28 U.S.C. against plaintiffs and in favor of defendants on the grounds that there is no genuine issue of fact to be tried and defendants are entitled to judgment as a matter of law; (2) granting protective relief pursuant to Fed. R. Civ. Proc. 26(c), with respect to plaintiffs' request for depositions of defendants upon oral examination, pending this Court's disposition of the within motion for summary judgment; (3) granting an interim

stay of said depositions pending this Court's disposition of this motion for a protective order, and (4) for such other and further relief as this Court deems appropriate.

Dated: New York, New York
May 13, 1974

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for State Defendants
Two World Trade Center
New York, New York 10047
By

MARIA L. MARCUS
Assistant Attorney General

TO: BRUCE J. ENNIS, ESQ.
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GEORGE KOSSOY, ESQ.
Goldwater & Flynn
60 East 42nd Street
New York, New York 10017

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

----------X

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, NORTON B. WALLACH, individually and as Director of Brooklyn State Hospital, CHARLES J. WINKLER, individually and as Director of Hillside Medical Center, and LOUIS LEFKOWITZ, individually and as Director of Gracie Square Hospital,

Defendants.

----------X

AFFIDAVIT IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

74 C 534

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

MARIA L. MARCUS, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, attorney for defendants ALAN D. MILLER, Commissioner of Mental Hygiene of the State of New York, and NORTON B. WALLACH, Director of Brooklyn State Hospital. I am familiar with the facts and circumstances herein.

I submit this affidavit in support of the State defendants' motion for a protective order with respect to the deposition upon oral examination of defendants by plaintiffs, pending this Court's disposition of defendants' motion for summary judgment.

Plaintiffs have served a Notice to Take Depositions Upon Oral Examination, to commence on May 31, 1974 and to "continue from day to day until completed."

Defendants have filed a motion for summary judgment on the grounds that there is no substantial federal question presented in this case and no material issue of fact to be tried, and that therefore defendants are entitled to judgment as a matter of law.

Plaintiffs allege the unconstitutionality of the state policy embodied in § 15.13 of the Mental Hygiene Law (McKinneys 1973 1974 Supp.). The statute (which is set out in full in State defendants' memorandum) provides that the records of former mental patients shall be confidential and shall not be released except pursuant to court order, or to the mental health information service, or to an attorney representing a patient on the issue of involuntary hospitalization, or to a licensed physician with the consent of the patient. Plaintiff JANET GOTKIN alleges that she has been a voluntary patient in state and private mental hospitals on a number of occasions, in part due to a series of suicide attempts. She alleges that she is now writing a book about her experiences, and that she would like to obtain her clinical hospital records to assist her in completing the book.

The intention of § 15.13 is to insure that a licensed medical practitioner will review the hospital records of former mental patients before release of such records, so that any material detrimental to the patient's mental health may be screened out and so that material involving the identity and privacy of others referred to in the records can be deleted.

It should be noted that plaintiffs could obtain the information they seek simply by requesting its release to a licensed physician acting on MRS. GOTKIN'S behalf, who could in his discretion arrange to have a copy of the records given to plaintiffs. Only such portions of the records as would in his judgment be harmful to the patient or violative of the privacy of others, would be retained as confidential.

The State policy at issue is reasonable and valid, and wholly in harmony with the United States Constitution. As is more fully shown in the State defendants' memorandum in support of the motion for summary judgment, the purported federal question presented in plaintiffs' complaint is wholly insubstantial and provides no basis for federal intervention herein.

WHEREFORE, the protective order and other relief requested in the within motion should in all respects be granted.

/s/ Marcia L. Marcus
MARCIA L. MARCUS

Sworn to before me this
13th day of May, 1974

/s/ Margery Eames Reitler
Deputy Assistant Attorney General
of the State of New York

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JANET COHEN and EVE COHEN, individually and on behalf of all persons similarly situated,

Plaintiff

v.

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, et al.

Defendants

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Civil Action
File No. 74C 504

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

Abbott C. Weinstein, being duly sworn, deposes and says:

That he is Director of Statistics and Clinical Information Systems for the New York State Department of Mental Hygiene, that he is conversant with the Department of Mental Hygiene policy regarding disclosure of information from patients' medical records, and that he makes this affidavit in support of the State defendants' motion and is fully familiar with all of the facts stated herein except as to those matters stated upon information and belief and as to those he believes them to be true.

Department of Mental Hygiene policy provides that information from the medical record of a former patient of a hospital or other facility operated by the Department of Mental Hygiene may be made available, upon the request of the former patient to any physician designated by the former patient to act on his or her behalf. Information about a former patient is made available through a physician rather than directly to the former patient for the following reasons:

1. Medical records ordinarily include information stated in technical medical terminology which might be misunderstood by an individual not medically trained;

2. The revelation of some information in a former patient's record could be detrimental to that individual's current mental well being;

3. Information in an individual's medical record often includes references to other individuals, such as relatives, friends or fellow patients, which should remain confidential in order to protect the rights of those other individuals.

The physicians to whom the record has been made available provide an oral interpretation of the record's contents to the former patient and/or former patient's designee. If the physician considers that the record contains no information which would be harmful to the former patient or which would

violate the rights of others to confidentiality, he may arrange to have a copy of the record given to the former patient. If parts of the record would be harmful to the former patient or would violate the rights of others, copies of those parts would not be given to the former patient.

The former patient may designate any licensed physician in private practice, or he may request the Director of the State hospital in which he was treated to designate a physician on the staff of the State hospital to provide the comparable service. Except for the cost of preparing a standard treatment summary which is borne by the hospital, the cost of duplicating additional sections of the record would be borne by the former patient.

While it is Department policy to provide information from a present or former patient's medical record to a physician upon the request of the present or former patient and the consent of the Commissioner, it is not Department policy to permit such information to be given to prospective or present employers.

s/ Albert E. Lefstein
Assistant Commissioner

Sworn to before me
this 10th day of May 1974

s/ [illegible]
[illegible]
Qualified in [illegible] County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----------X

JANET GOTKIN and PAUL GOTKIN, individually: and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, HOWARD B. WALLACH, individually and as Director of Brooklyn State Hospital, CHARLES J. [illegible], individually and as Director of Hillside Medical Center, and M. [illegible] DIPALERMO, individually and as Director of Gracie Square Hospital,

Defendants.

STATEMENT UNDER RULE 3(g)

74 Civ 584

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Defendants, ALAN D. MILLER and HOWARD B. WALLACH, as and for their statement under Rule 3(g) of the General Rules of the United States District Court for the Eastern District of New York, allege:

1. Upon information and belief, plaintiff Janet Gotkin was a voluntary patient at Brooklyn State, Hillside and Gracie Square Hospitals on several occasions from 1962-1970. The precipitating cause of many of these hospitalizations was a series of suicide attempts and threats.

2. Plaintiffs seek to inspect and copy Janet Gotkin's hospital records which, under § 15.13 of the New York Mental Hygiene Law, may be released only to certain designated persons, with the consent of the patient. Such persons include licensed physicians.

3. Upon information and belief, plaintiff, Janet Cotkin has made no request that a designated physician review her hospital records, and transmit to her any portions thereof which would in his judgment neither be harmful to her mental health nor violative of the privacy of others.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
Miller and Wallach
Office & P.O. Address
2 World Trade Center
New York, New York 10047

Louis J Lefkowitz
Attorney General
by
Irma L Mazzeo
Assistant Attorney General

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated, Plaintiffs, -against- ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, MORTON B. WALLACH, individually and as Director of Brooklyn State Hospital, CHARLES J. RABINER, individually and as Director of Hillside Medical Center, and MARVIN LIPKOWITZ individually and as Director of Gracie Square Hospital, Defendants.	STATEMENT PURSUANT TO RULE 9 (g) 74 Civ. 584

Plaintiffs, pursuant to Rule 9 (g) of the General Rules of the United States District Court for the Eastern District of New York submit that the following material facts are in dispute:

1. Defendants do not rely upon the Mental Hygiene Law in refusing to release plaintiff's own hospital records to her (see No. 2, Defendants' Statement under Rule 9(g)).

2. Defendants' policy is to deny former mental patients access to their own hospital records.

3. Defendants have no evidence whatsoever that release of her hospital records to Janet Gotkin or to other members of the class would be harmful to her/their mental health or violative of the privacy of others.

4. Release of hospital records to former patients would not be harmful to the mental health of the vast majority

of such persons.

5. Third parties have no reasonable expectation of privacy in their communications with a patient's doctor.

6. Defendants never offered to release Janet Gotkin's hospital records to a "designated physician" (see No. 3, Defendants' Statement Under Rule 9 (g)).

7. Defendants or other physicians are not capable of accurately predicting when it will be harmful to a former patient to release his or her hospital records.

8. Defendants' Rule 9 (g) statement states only three facts in issue. Presumably, the factual allegations in all of the following paragraphs of Plaintiffs' complaint are still at issue: 2,3,4,5,6,7,11,12,13,14,15,16,17,18,19, 20,21,22,23,25,28,31,32,33, and 34.

Christopher A. Hansen
Mental Health Law Project
84 Fifth Avenue
New York, N.Y. 10011

Bruce J. Ennis
New York Civil Liberties
Union and Mental Health
Law Project
84 Fifth Avenue
New York, N.Y. 10011

Dated: New York, N.Y.
May 28, 1974

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

JANET GOTKIN and PAUL GOTKIN, Individually and on Behalf of All Persons Similarly Situated, Plaintiffs, vs. ALAN D. MILLER, Individually and as Commissioner of Mental Hygiene of the State of New York; NORTON B. WALLCH, Individually and as Director of Brooklyn State Hospital; CHARLES J. RABINER, Individually and as Director of Hillside Medical Center; MARVIN LIPKOWITZ, Individually and as Director of Gracie Square Hospital; Defendants.	74 CIV 584 AFFIDAVIT OF DIRECTOR GIULIO DIFURIA

STATE OF WASHINGTON)
) ss.:
COUNTY OF K I N G)

I, Giulio diFuria, being duly sworn on oath, depose and say as follows:

1. I am the Superintendent of Western State Hospital in

AFFIDAVIT

Fort Steilacoom, Washington. I received my medical training in Bologna, Italy where I also practiced as an internist for two years. In 1953 I came to the United States and interned at Salem Hospital in Massachusetts. Subsequently I trained for one year in psychiatry at Charles V. Chapin Hospital in Providence, Rhode Island. I did my residency training for two more years in psychiatry in Norwich, Connecticut. For one year I was Chief of Hospital Services at Medfield State Hospital in Harding, Massachusetts. During that year I was also Psychiatrist in Charge of Out-Patient Services.

2. In 1958 I began work at Western State Hospital as Chief of Male Services. In 1961 I became Clinical Director of Psychiatry. In 1962 I was the Senior Clinical Director and Assistant to the Superintendent. In 1963 I was appointed Superintendent and have been Superintendent ever since. I have practiced privately part time since 1958. I have been an Assistant Professor of Psychiatry and Psychopharmacology at the University of Washington since 1965.

3. I am a Council Member of the American Association of Superintendents of Mental Hospitals. I am a Fellow of the American Psychiatric Association and a Fellow of the American Geriatric Association. I am a Fellow of the North Pacific Society of Neurology and Psychiatry and a member of the Pierce County and Washington State Medical Associations. I am certified as a Mental Health Administrator by the American Psychiatric Association.

4. The hospital of which I am Superintendent, Western State Hospital, is the largest in the State of Washington. Since 1953 its population has varied between 3,200 and 950. It treats persons who are civilly committed, those who are committed pursuan to findings of criminal insanity, those whose competency to stand

trial must be assessed, those who are incompetent to stand trial and are being treated for that condition, persons found to be sexual psychopaths, geriatric patients and voluntary patients who seek psychiatric assistance.

5. Since 1971 it has been Western State Hospital's policy to provide each patient complete access to his or her complete file in the hospital. The hospital does not make exceptions to this rule for any class of patients that we serve. No secret files or files separate from the hospital files are kept to which a patient does not have access. I believe, and it is Western State Hospital's policy, that each patient's file is his or her property and patients are absolutely entitled to know and to copy everything in their own file.

6. My experience with this policy, which we instituted at this hospital after considerable thought, is that there is no evidence that patients react adversely to exposure to their complete file. Quite to the contrary, we have found that knowing that they have access to their file and reading the information in the file makes patients aware of the reality of their mental illness and thereby assists them in the recovery phase by providing insight into pathological thinking. This is true regardless of the terminology, factual recitations and labels entered in the files by staff and other persons.

7. We have not had one case in the three and a half years that this policy has been in effect that by any stretch of the imagination could be characterized as an adverse reaction of a patient to his file and the information in it. Although prior to initiating this policy some persons were concerned that mentally ill criminal offenders would respond violently, this has proven to be totally untrue, and not one of the mentally ill offenders has

has an adverse reaction when he or she viewed his or her file.

8. When this policy was initiated, the staff of the hospital was ambivalent and some members in the beginning were somewhat hesitant to make certain file entries. Within a short time all staff found that there was no adverse effect for patients viewing files and, as a result, there has been and is now complete honesty and straightforwardness when the staff makes file entries. The staff at this hospital agrees that it is one of our best psychiatric tools.

9. Immediately after the policy was initiated, patients did rush to see their files, but even then there were no adverse effects. Subsequently requests to view files tapered off and at present very few patients seek to view their files although all patients know that it is their right.

10. No patient has ever attempted or threatened to destroy his or her records at the hospital.

11. The policies as described apply as well to all former patients of the hospital who wish to view their own records compiled during their period of treatment here.

Giulio diFuria

SUBSCRIBED AND SWORN TO before me this 7 day of May, 1974.

NOTARY PUBLIC in and for the State of Washington, residing at

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated, Plaintiffs -against- ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, MORTON B. WALLACH, individually and as Director of Brooklyn State Hospital, CHARLES J. RABINER, individually and as Director of Hillside Medical Center, and MARVIN LIPKOWITZ, individually and as Director of Gracie Square Hospital, Defendants.	74 Civ. 584 AFFIDAVIT

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

BRUCE J. ENNIS, being duly sworn, deposes and says:

I am co-counsel for plaintiffs and am personally familiar with the facts herein.

2. Attached hereto are copies of a self-explanatory letter dated October 31, 1973 from plaintiff Janet Gotkin to Brooklyn State Hospital, and a letter dated November 14, 1973, in reply. These letters were given to me by plaintiff Janet Gotkin.

3. I have been actively engaged in representing mental patients since December, 1968. During that time I have been told by many former patients of hospitals operated or regulated by defendants that they had asked but were denied access to their own hospital records. In all that time I have never heard, from any source, that former patients could gain access to their records if they submitted to a medical screening procedure.

4. I have re-read the Policy Manual of the Deparment of Mental Hygiene and the official regulations of the Department, and I have found no reference to a medical screening procedure under which hospital records could be made available to former patients.

5. I was one of the persons appointed to an Advisory Committee by the Joint Legislative Committee on Mental and Physical Handicap of the New York State Legislature. The purpose of the Advisory Committee, which met regularly for almost two years, was to study and draft the bill which is now the recodified Mental Hygiene Law. I personally participated in the drafting and wording of what is now §15.13. I can recall nothing, and can find nothing in my files of the various drafts, proposals and discussions, that would support the contention advanced by the attorney for the defendants that the "intention" of that section is to deny former patients access to their records unless those

records are first screened by a physician. Certainly no such intention is expressed in the Memorandum of the Joint Legislative Committe On Mental and Physical Handicap which accompanied the bill. See McKinney's Session of New York, 1972 (Vo. 2), pp. 3277, 3283.

6. Based upon all of the information available to me, I believe plaintiffs can establish, through pre-trial discovery, that the medical screening mechanism now proposed by defendants is a purely ad hoc response to this litigation. and not a policy of general applicability.

Bruce J. Ennis

Sworn to before me
this 28 day of May, 1974

Notary Public

CHRISTOPHER A. HANSEN
Notary Public, State of New York
No. 31-56[illegible]
Qualified in New York County
Commission Expires March 30, 1976

44 Park Trail
Croton-on-Hudson, N. Y. 10520
October 31, 1973

Director
Brooklyn State Hospital
Clarkson and Schenectady Avenues
Brooklyn, New York

Dear Sir:

I am writing to you, at the suggestion of Mr. Bruce Ennis of the New York Civil Liberties Union, to request access to my records of hospitalization.

I was a patient at Brooklyn State Hospital during the years 1964 and 1965. Your records would be under my maiden name, Janet Susan Lass.

In reference to seeking these records of hospitalization, Mr. Ennis suggested that I mention to you the precedent-setting law recently passed in Hawaii, which allows mental patients, even while in a mental hospital, to see their entire records, including diagnoses, results of psychological tests, medication and other treatments given or prescribed, descriptive notes, prognosis, court records, etc.

My husband, who is not an ex-mental patient, and I are in the process of writing a book for Quadrangle Books and have concluded that the information contained in my records is of supreme importance for us. We would be more than willing to pay duplicating, postage, or any other costs involved in obtaining either possession of access to these records.

Thanking you for your speedy cooperation, and looking forward to hearing from you very soon, I am

Yours sincerely,

Janet Lass Goffin

Form 91-Adm.

State of New York
Department of Mental Hygiene

Brooklyn State Hospital
681 Clarkson Avenue
Brooklyn, New York 11203
TELEPHONE: 212-756-9600

DIRECTOR
MORTON B. WALLACH, M.D.

Deputy Director
A. M. PRIMELO, M.D.

Chiefs of Service
J. E. RAPPA, M.D.
Division I
O. SYKES, M.Ed.
Division II (Acting)
G. SALTUPS, M.D.
Division III
C. J. CHIARELLO, M.D.
Division IV
H. HOUSTON, M.S.
Division V (Acting)
A. S. IMPASTATO, M.D.
Division VI
D. RUBIN, M.D.
Division VII
E. PERROTTI
Division Liaison

Director of Laboratories
A. YIANNIOU, M.D.

Director of Rehabilitation
J. RAMSEUR, M.A.

Business Officer
T. C. GREASER

Personnel Officer
F. GAREY

November 14, 1973

Re: Gotkin, Janet Lass

Mrs. Janet Gotkin
44 Park Trail
Croton-on-Hudson
New York 10520

Dear Mrs. Gotkin:

We have recently received your request to inspect your own medical records.

However, please be advised that under the Provisions of Section 15.13 of the New York State Mental Hygiene Law, you must either obtain consent from the Commissioner of Department of Mental Hygiene or make application to the New York State Supreme Court for an Order authorizing such examination of your record on notice to Brooklyn State Hospital and the Attorney General's Office.

We trust this information will be of assistance to you.

Very truly yours,

Morton B. Wallach, M.D.
Director

BY: Donald M. Rubin, M.D.
Psychiatrist III

DMR.ms

cc: L. Cooper, Esq.
Assistant
Attorney
General

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, MORTON B. WALLACH, individually and as Director of Brooklyn State Hospital, CHARLES J. RABINER, individually and as Director of Hillside Medical Center, and MARTIN LIPKOWITZ, individually and as Director of Gracie Square Hospital,

Defendants.

----------X

74 Civ. 584

AFFIDAVIT

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

CHRISTOPHER A. HANSEN, being duly sworn, deposes and says:

1. I am one of the attorneys for plaintiffs in the above-entitled case.

2. I am employed by the Mental Health Law Project full-time to represent persons alleged to be mentally ill and mentally retarded.

3. We receive one or two calls each week from former mental patients who seek access to their hospital records, usually after they have been denied access by the hospital.

4. I know of no former patient who has been given access to his or her hospital records.

5. I have spoken today with Leon Rosenblatt, current president of the Mental Patients Liberation Project in New York City.

6. He does not know of any former patient who has been given his or her hospital record.

7. In mid-1973, he and a therapist on his behalf, wrote to Central Islip State Hospital, Central Islip, New York, requesting copies of his hospital record.

8. Central Islip is a hospital under the direct control and supervision of Defendant Miller.

9. In reply to Mr. Rosenblatt's therapist, the Unit Chief of that hospital stated that "hospital records are privileged and confidential and can be made available only on an Order of a Judge of a New York State Court of Record." (See attached letter.)

10. Based on my personal knowledge, I believe the claims of the plaintiffs are not unique and that there exists a substantial group of former patients who have sought and been denied access to their own hospital records, and therefore this action should be permitted to be maintained as a class action.

Christopher A. Hansen

Christopher A. Hansen

Sworn to before me
this 28 th day of May, 1974

Notary Public

BRUCE J. ENNIS
Notary Public, State of New York
No. 31-6191955
Qualified in New York County
Commission Expires March 30, 1976

ANTHONY B. CORREOSO, M.D.
Director

IRVING L. JACOBS, M.D.
Deputy Director, Clinical

FREDERICK WEINBERG, M.D.
Director of Clinical Laboratories

State of New York
Department of Mental Hygiene

CENTRAL ISLIP STATE HOSPITAL
Central Islip, N. Y. 11722

JAMES T. KELLEHER
Business Officer

July 31, 1973

RE: LEON ROSENBLATT

Louise Cooper, C.S.W.
Psychotherapist
50 W. 97th Street
New York, New York 10025

Confidential and privileged-
for professional purposes only
not to be used against the
patient's interest.

Dear Ms. Cooper:

This is to acknowledge receipt of your letter of recent date regarding the above-named former patient.

I wish to advise that hospital records are privileged and confidential and can be made available only on an Order of a Judge of a New York State Court of Record.

I regret we cannot be of assistance to you.

Very truly yours,

ANTHONY B. CORREOSO, M.D.
DIRECTOR

By: R. Giannola

Rosolino Giannola, M.D.
Unit Chief

RG:cab
#71921

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

- -x

JANET COTKIN and PAUL COTKIN, Individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, Individually and as Commissioner of Mental Hygiene of the State of New York, [illegible], Individually and as Director of Brooklyn State Hospital, [illegible], Individually and as Director of Hillside Medical Center, and MARVIN LINKOWITZ, Individually and as Director of Creole Manor Hospital,

Defendants.

- -x

NOTICE OF MOTION

74 C 584

S I R S:

PLEASE TAKE NOTICE, That upon the annexed affidavits of GEORGE KOSSOY and MARVIN LINKOWITZ, and upon all the proceedings previously had herein, the undersigned will move this Court, at a term for motions to be held before the Hon. Anthony J. Travia, in Courtroom 9, in the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 14th day of June, 1974, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order, (1) pursuant to Fed. R. Civ. Proc. 12(b)(1), to dismiss the within action because the Court lacks jurisdiction of the subject matter of the action, for the reason that the defendant MARVIN LINKOWITZ is a purely private party whose actions with respect to the plaintiffs give rise to no Federal Constitutional rights; or (2), in the alternative, pursuant to Fed. R. Civ. Proc. 56(b), granting summary judgment against plaintiffs and in favor of said defendant, on the ground that there is no genuine issue of fact to be tried and said

defendant is entitled to judgment as a matter of law; and (3) granting such other and further relief as this Court may deem proper.

Dated: New York, N. Y.
May 31, 1974.

Yours, etc.,

COLEMAN & FLYNN
Attorneys for Defendant
[illegible]
60 East 42nd Street
New York, N. Y. 10017

By: [illegible]

TO:

BRUCE J. ENNIS, ESQ.
CHARLOTTE A. [illegible], ESQ.
84 Fifth Avenue
New York, N. Y. 10011

MARIA L. MARCUS, ESQ.
Assistant Attorney General
LOUIS J. LEFKOWITZ, Esq.
Attorney General of the
State of New York
2 World Trade Center
New York, N. Y. 10047

MELVIN NUSKIN, ESQ.
Lippe, Nuskin & Scholassel
114 Old Country Road
Mineola, N. Y. 11501

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

- -x

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, [illegible], individually and as Director of Rockland State Hospital, [illegible], individually and as Director of [illegible] Mental Center, and MARVIN LIPKOWITZ, individually and as Director of Oracle Square Hospital,

Defendants.

- -x

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS ACTION.

74 C 564

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GEORGE KOSSOY, being duly sworn, deposes and says:

I am of the firm of Goldwater & Flynn, attorneys for the defendant MARVIN LIPKOWITZ, named herein both individually and as Director of Oracle Square Hospital. This affidavit is submitted in support of the motion of said defendant to dismiss the action upon the ground that this Court lacks jurisdiction of the subject matter thereof or, in the alternative, for summary judgment against plaintiffs and in favor of said defendant.

I have been counsel to Oracle Square Hospital for many years since its creation and a member of its Board of Directors and, therefore, submit this affidavit upon my own knowledge.

I have read the affidavit of Dr. MARVIN LIPKOWITZ, Medical Director of Oracle Square Hospital, and can say from my

familiarity as long-time counsel to the Hospital, that he has accurately enunciated the policy of the Hospital, and accurately described the purely private nature of the Hospital as an institution.

It is submitted that the carrying out of this policy which, although it reflects the approach of the Department of Mental Hygiene with respect to its own records, does not constitute "state action" sufficient to create jurisdiction in the Federal Courts of actions predicated on the refusal of the hospital to turn over clinical records directly to patients. Nor does "state action" arise by virtue of the fact that the Department of Mental Hygiene has licensed Gracie Square Hospital and has certain supervisory powers with respect to it. At bottom, Gracie Square Hospital is a private institution making its own decisions as to policy in all areas, including those having to do with the records of patients.

Since there is no state action involved, it is respectfully submitted that this Court lacks jurisdiction over the subject matter of the action. However, even if this Court determined that the adoption of this policy somehow gave rise to "state action", it is respectfully submitted that the policy is so reasonable in nature as to create no invasion of any civil or Constitutional rights of plaintiffs. In such circumstance, the policy being reasonable and in harmony with the Federal Constitution, no Federal question is presented by the complaint in this action and, accordingly, summary judgment should be entered in favor of the defendant MARVIN LITTWIN and against the plaintiffs.

Wherefore, it is respectfully prayed that this Court grant an order dismissing the action for lack of jurisdiction of

the subject matter or, in the alternative, directing summary judgment in favor of the defendant MARVIN LIPSCHITZ and against the plaintiffs, and for such other and further relief as to the Court may seem proper.

Sworn to before me this
31st day of May, 1974.

GEORGE ROSSOY

ROBERT CONRAD
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-0535705
Qualified in New York County
Term Expires March 30, 19[illegible]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

- -x

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, MORTON D. BIRNBACH, individually and as Director of Brooklyn State Hospital, CHARLES J. [illegible], individually and as Director of Hillside Medical Center, and MARVIN LIPKOWITZ, individually and as Director of Gracie Square Hospital,

Defendants.

- -x

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS ACTION.

74 C 584

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

MARVIN LIPKOWITZ, being duly sworn, deposes and says:

I am the Medical Director of Gracie Square Hospital and a defendant herein, sued individually and in my capacity as Director of the Hospital. I submit this affidavit in support of my motion to dismiss this action for lack of jurisdiction over the subject matter or, in the alternative, for summary judgment.

I am a graduate of Temple University Medical School, in Pennsylvania, and I am licensed to practice medicine both in the Commonwealth of Pennsylvania and in the State of New York. Prior to taking on my current position as Medical Director of Gracie Square Hospital, I was the Director of Psychiatry at Kings County Hospital, in Brooklyn.

Gracie Square Hospital is a private, proprietary hospital,

devoted approximately three-quarters to psychiatric patients and one-quarter to general medical patients. Situated in the Borough of Manhattan, Gracie Square Hospital is what is known as an "open-staffed" hospital, that is, the doctors whose patients are admitted to the Hospital are outside, attending physicians, who are qualified by the Hospital to be such.

Gracie Square Hospital is funded privately and receives no grants or emoluments or awards from the State of New York or the City of New York, or of any agency of the State of New York or the City of New York. In short, Gracie Square Hospital is a wholly private institution.

Plaintiffs in this action seek to obtain the patient records of the plaintiff JANET GOTKIN during her stays as a psychiatric patient at Gracie Square Hospital. The policy of Gracie Square Hospital with respect to the release of the clinical records of patients is similar to the policy of the Department of Mental Hygiene with respect to its own facilities as enunciated in Section 15.13 of the New York State Mental Hygiene Law. There, it is provided that clinical records of patients in Mental Hygiene Department facilities shall not be public records but may be released pursuant to Court order, to the Mental Health Information Service, to attorneys representing patients in involuntary hospitalization cases and, with the consent of the patient, to a physician who requests such clinical record in connection with or for the benefit of the patient.

The adoption of this policy by the Hospital is a voluntary one, designed reasonably to protect the confidentiality of the information contained in the clinical records of patients. It must be remembered, of course, that many of these records contain the of-the-moment ruminations of physicians, as well as the inquiri

and other utterances of the patients, which can, of course, involve persons other than the patient. Nonetheless, pursuant to the policy of the Hospital, if a physician, with the consent of Mrs. Gotkin, requested a copy of her clinical record as a patient in Gracie Square Hospital, such record would be turned over to that physician. Such physician, it is reasonably assumed, will bear in mind, when he receives such clinical record, the need to protect the patient against being disturbed by the materials contained in the patient's own clinical record and, also, the need to protect the rights of others who may be referred to in the record. Bearing in mind these needs, the physician may, in his judgment, determine to turn over some or all of the clinical record to Mrs. Gotkin. Thus, the interests and rights of all are protected: Mrs. Gotkin, through her physician, may indeed get access to the entire clinical record of her stays as a patient in the Hospital: to the extent that her physician feels that portions of the record may be damaging to her, he can screen them out; and to the extent that the rights of others are affected by entries contained in the record, the physician is equally capable of screening those out. Accordingly, Mrs. Gotkin can get what she needs merely by having a licensed physician make the required request.

Wherefore, it is respectfully prayed that this Court grant an order dismissing the action for lack of jurisdiction of the subject matter or, in the alternative, directing summary judgment against the plaintiffs, and for such other and further relief as to the Court may seem proper.

SWORN to before me this
31st day of May, 1974.

[illegible]
MARVIN LIEBOWITZ

ROBERT CONRAD
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-[illegible]
Qualified in New York County
Term Expires March 30, 1975

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

- -x

JANET GOTKIN and PAUL GOTKIN, Individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, Individually and as Commissioner of Mental Hygiene of the State of New York, MARVIN B. LIEBER, Individually and as Director of Brooklyn State Hospital, CHARLES J. MILLER, Individually and as Director of Hillside Medical Center, and MARVIN LIPKOWITZ, Individually and as Director of Creedmoor Hospital,

Defendants.

- -x

STATEMENT UNDER RULE 9(g)

74 C 564

Defendant MARVIN LIPKOWITZ, as and for his statement under Rule 9(g) of the General Rules of the United States District Court for the Eastern District of New York, alleges:

1. Upon information and belief, plaintiff JANET GOTKIN was a voluntary patient at Creedmoor Hospital ("Hospital") on several occasions between 1962 and 1970. The precipitating cause of many of these hospitalizations was a series of suicide attempts and threats.

2. Plaintiffs seek to inspect and copy JANET GOTKIN's hospital records which, under the Hospital's policy, may be released to a physician, with the consent of the patient.

3. Upon information and belief, plaintiff JANET GOTKIN has made no request that a designated physician review her hospital records.

[illegible]
Attorneys for Defendant
[illegible], individually
and as Director of Gracie
Square Hospital

By: [illegible]

Office & P.O. Address
60 East 42nd Street
New York, N.Y. 10017

ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, MORTON B. WALLACH, individually and as Director of Brooklyn State Hospital, CHARLES J. RABINER, individually and as Director of Hillside Medical Center, and MARVIN LIPKOWITZ, individually and as Director of Gracie Square Hospital,

Defendants.

NOTICE OF MOTION AND MOTION

74 Civ. 584
(Judge Travia)

- x

The defendants, CHARLES J. RABINER and LONG ISLAND JEWISH-HILLSIDE MEDICAL CENTER, incorrectly sued herein as HILLSIDE MEDICAL CENTER, move the Court as follows:

1. To dismiss the complaint pursuant to Fed. R. Civ. Pro. 12(b)(6) for failing to state a claim against the defendants upon which relief can be granted on the grounds that the facts alleged fail to show any deprivation of plaintiffs' constitutional or civil rights or that defendants acted under color of state law as required by 42 U.S.C. §1983.

dismiss the action on the ground that principles of state common law may be dispositive of the issues presented.

4. To grant defendants such other and further relief as the Court deems just and proper.

Dated: Mineola, New York,
May 31, 1974.

MELVYN B. RUSKIN
a Member of the Firm
LIPPE, RUSKIN & SCHLISSEL, P.C.
Attorneys for Defendants, Charles J. Rabiner, and Long Island Jewish-Hillside Medical Center
114 Old Country Road
Mineola, New York 11501
(516) 248-9500

TO: BRUCE J. ENNIS, ESQ.
CHRISTOPHER A. HANSEN, ESQ.
New York Civil Liberties Union and
Mental Health Law Project
Attorneys for Plaintiffs
84 Fifth Avenue
New York, N.Y. 10011

LOUIS J. LEFKOWITZ, ESQ.
Attorney General of the State
of New York
Attorney for State Defendants
Two World Trade Center
New York, N.Y. 10047

GEORGE KOSSOY, ESQ.
GOLDWATER & FLYNN
Attorney for Defendant,
Marvin Lipkowitz
60 East 42nd Street
New York, N.Y. 10017

PLEASE TAKE NOTICE, that the undersigned will bring the above motion on for hearing before this Court in Room 9, United States District Court, 225 Cadman Plaza, Brooklyn, New York, on the 14th day of June, 1974, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

MELVYN B. RUSKIN
a Member of the Firm
LIPPE, RUSKIN & SCHLISSEL, P.C.
Attorneys for Defendants, Charles J. Rabiner, and Long Island Jewish-Hillside Medical Center
114 Old Country Road
Mineola, New York 11501
(516) 248-9500

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs,

AFFIDAVIT

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, MORTON B. WALLACH, individually and as Director of Brooklyn State Hospital, CHARLES J. RABINER, individually and as Director of Hillside Medical Center, and MARVIN LIPKOWITZ, individually and as Director of Gracie Square Hospital,

Defendants.

- -x

STATE OF NEW YORK)

COUNTY OF NASSAU) SS.:

MELVYN B. RUSKIN, being duly sworn, deposes and says:

1. I am a member of the firm of Lippe, Ruskin & Schlissel, P.C., attorney for the defendants, CHARLES J. RABINER and LONG ISLAND JEWISH-HILLSIDE MEDICAL CENTER (hereafter "Medical Center") incorrectly named in the complaint as the HILLSIDE MEDICAL CENTER. Dr. Rabiner is the Chairman of the Department of Psychiatry of the Medical Center and is incorrectly named in the complaint as the Director of the Hillside Medical Center.

I have had discussions with officers and trustees of the Medical Center and with Dr. Rabiner and am familiar with the facts and circumstances of this action. This affidavit is submitted in support of the defendants' motion to dismiss the complaint for the reasons set forth in the Motion and Notice of Motion annexed hereto.

2. The Medical Center is a private, voluntary hospital existing under the Not-for-Profit Corporation Law of the State of New York. The Hillside Division is the psychiatric unit of the Medical Center and renders care and treatment to persons suffering from mental disabilities.

3. The plaintiffs have brought this action under the Civil Rights Act, 42 U.S.C. §1983, and 28 U.S.C. §1343, and ask this Court to intervene and compel the Medical Center to turn over to them the complete psychiatric record of Janet Gotkin concerning the period of her confinement at the Hillside Division some ten years ago. This information is admittedly sought by plaintiffs not for purposes related to medical care and treatment but to assist them in completing a book they have written.

4. There are three separate reasons why the Court should grant the instant motion and dismiss this action.

First, the complaint fails to state a claim upon which relief can be granted because (1) it is wholly conclusory, and (2) those meager facts it contains do not raise issues of constitutional dimension nor show that defendants acted under color of state law.

Second, there is a lack of subject matter jurisdiction because the actions of the defendants are of private parties and do not constitute "state action".

Third, if plaintiffs have any rights at all, they arise solely under local common law requiring this Court to abstain from exercising jurisdiction. Each of these contentions will be treated separately below.

I.

5. At the outset it must be noted that the pleadings are conclusory with respect to alleging violations of plaintiffs' constitutional rights. Indeed, the complaint does not allege the violation of any specific constitutional right. Nowhere is there an attempt by plaintiffs to state how their rights are violated and nowhere are the defendants apprised of the manner in which they have infringed any constitutional rights of the plaintiffs. To permit such a pleading to stand would require the defendants to answer without knowing what wrong they are alleged to have committed. As shown in the defendants' Memorandum of Law, the courts have uniformly dismissed actions based on such conclusory allegations.

6. Fundamental to any action under 42 U.S.C. §1983 is that plaintiff show the deprivation of a federally guaranteed right. An examination of the complaint's allegations taken in their best light clearly shows that no deprivation of such rights exist in this case.

Plaintiffs mention the First Amendment. Presumably they claim that the defendants infringe their right of free speech or their right to freedom of the press, based on their desire to have information to assist in publishing a book. Yet there is no showing that the Medical Center's action is preventing plaintiffs from saying or publishing what they wish. This is apparent from the fact that the book referred to is already complete. (See complaint, par. 18). More importantly, as shown in defendants' Memorandum of Law, there is no case arising under federal or state law which even suggests that a citizen's access to institutional records arises under other than common or statutory law.

Next, plaintiffs mention the Fourth and Ninth Amendments. The Fourth Amendment protects individuals from unreasonable searches and seizures by government authorities. This in no way relates to the Medical Center's actions and is entirely irrelevant to the facts of this case. Similarly, the Ninth Amendment has no application to the instant proceeding, as and by its very terms it does not confer any substantive rights.

Finally, plaintiffs mention the Fourteenth Amendment. Their claim is that the defendants' actions have deprived them of their property without due process. However, there is no claim nor is there a showing or just basis under the circumstances of this case to hold that the psychiatric record involved is the property of the plaintiffs. On the contrary, the records are comprised of entries made by Medical Center physicians and

employees and as such, are properly the property of the Medical Center. This the plaintiffs recognize by asserting merely an "interest" in the records and not ownership. In this connection, state law does not recognize an interest such as plaintiffs allege. Therefore, any claim based on the Fourteenth Amendment is without merit.

As is apparent from the above analysis, it is difficult, if not impossible, to address one's self to the substantive claims asserted by plaintiffs since the complaint utterly fails to set forth facts within the framework of recognizable legal theories. Only because of the explanation contained in the plaintiffs' Memorandum of Law, submitted in opposition to the Attorney General's motion for summary judgment, have defendants been able to address themselves to these issues. While federal pleadings should be liberally construed, this general rule cannot rehabilitate a complaint which is devoid of facts that give rise to claims of constitutional dimensions.

7. A second principal requirement of any action under 42 U.S.C. §1983 is a showing that the defendants acted under color of state law. The instant complaint utterly fails to meet this requirement. The only reference to such action is contained in par. 7 of the complaint in the most conclusory form. As is set forth in the affidavit of Robert K. Match, M.D., the Executive Vice President and Director of the Medical Center, the policies that were followed in connection with Mrs. Gotkin's request for a copy of her psychiatric record were not state

policies nor were they imposed on the Medical Center by any particular state statute or regulation. Accordingly, the actions of the Medical Center and Dr. Rabiner cannot be deemed to have been taken under color of state law.

Similarly, there are no facts which would warrant a finding that the actions of these otherwise private parties are to be considered as the actions of a state because of some state involvement with them. As defendants' Memorandum of Law clearly demonstrates, even federal funding or state regulation of aspects of the medical field does not amount to sufficient state involvement to make a private hospital susceptible to an action under 42 U.S.C. §1983, absent a direct nexus between the state involvement and the complained of act. In this connection, such federal funding or state regulation does not dictate or in any way involve the internal policies of the Medical Center with respect to releasing psychiatric records to former patients. Accordingly, even if plaintiffs succeed in convincing this Court that their claim raises some colorable constitutional issue, the complaint must nevertheless be dismissed, since purely private action is involved.

II.

8. With respect to this Court's subject matter jurisdiction, it is clear that absent the requisite basis for jurisdiction, it is without power to act. As indicated above and in defendants' Memorandum of Law, there is an absence of any basis upon which to find that the actions of these private

party defendants constitutes state action. Thus, the jurisdictional requirements of 28 U.S.C. §1343 cannot be met and this action must be dismissed pursuant to Fed. R. Civ. Proc. 12(b)(1).

III.

9. Finally, even if this Court finds both a colorable constitutional claim and some basis for holding defendants' actions to constitute state action, it should still not permit this suit to continue. As is clear from defendants' Memorandum of Law, fundamental issues of state law are involved in this action. They are deeply tied to the constitutional issues plaintiffs assert. In addition, they are as yet undecided because of the novel facts involved herein. Under such circumstances, abstention is in order and the plaintiffs should be directed to bring their actions in the New York courts where the state issues can be resolved and the constitutional issues preserved.

WHEREFORE, it is respectfully requested that defendants' motion to dismiss the complaint be granted.

MELVYN B. RUSKIN

Sworn to before me this
7th day of June, 1974.

MICHAEL L. FAITHORN
NOTARY PUBLIC, State of New York
[illegible]
Qualified in [illegible] County
Commission Expires March 30, 1975

ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene, of the State of New York, MORTON B. WALLACH, individually and as Director of Brooklyn State Hospital, CHARLES J. RABINER, individually and as Director of Hillside Medical Center, and MARVIN LIPKOWITZ, individually and as Director of Gracie Square Hospital,

Defendants.

AFFIDAVIT

74 Civ. 584
(Judge Travia)

- -x

STATE OF NEW YORK)
COUNTY OF NASSAU)SS.:

ROBERT K. MATCH, M.D., being duly sworn, deposes and says:

1. I am the Executive Vice President and Director of the Long Island Jewish-Hillside Medical Center and am familiar with the facts and circumstances of this action. This affidavit is submitted in support of defendants' motion to dismiss the complaint for the reasons set forth in the affidavit of MELVYN B. RUSKIN, ESQ., which is submitted herewith.

2. The Medical Center is a private voluntary hospital existing under the Not-for-Profit Corporation Law of the State of New York, as is demonstrated by the copy of the Certifi-

cate of Type of Not-for-Profit Corporation and the Filing Receipt from the Secretary of State of the State of New York, which are attached hereto.

As a part of the Medical Center's operations, it maintains a division for the care and treatment of persons suffering from mental disabilities which is known as the Hillside Division.

3. In the past, the Medical Center has received Hill-Burton funding from the federal government for additions to its facilities. It also receives grants from time to time from federal, state and local agencies for conducting research, service and demonstration programs in various areas related to the medical field. Of course, the hospital is subject to those regulations which exist in the State of New York governing its functions.

4. In connection with its treatment of medical as well as psychiatric patients, the Medical Center keeps records relating to various aspects of the patient's treatment. These records contain, among other things: admission and discharge histories; diagnoses; observations; course of treatment; medication; internal memoranda; test results; and physical examination data. In the case of patients at the Hillside Division, these records also include such things as: psychological profiles; observations and conclusions of treating psychiatrists, psychologists and social workers; information about the patient which is received from third parties; and psychological evaluations of such third parties which are made by members of the Medical Center's staff. The records themselves are prepared by

Medical Center staff members or employees and are maintained primarily for the purpose of assisting the Medical Center in delivering effective patient care.

5. The Medical Center has adopted a policy governing the release of psychiatric records to patients. This policy is self-determined and is the result of evaluations made by the Medical Center's medical and administrative staff and approved by its Trustees, who have determined the circumstances under which psychiatric records should be released. This internal policy has not been mandated by any federal, state or local statute, ordinance, rule or regulation and was developed by the Medical Center in accordance with its evaluation of what is in the best interests of its patients. Indeed, to my knowledge, this policy was never discussed with any representative of government prior to its adoption and certainly no government representative dictated what policy the Medical Center would follow in this connection.

Finally, it should be noted that no funds that the Medical Center receives from any government source are tied to any requirement that affects the Medical Center's policy toward the disclosure of psychiatric records to patients or former patients. Any attempt by a government agency to impose such a requirement would be viewed by the Medical Center as an infringement of its autonomy to determine its own policies with respect to the release to patients or former patients of such records.

WHEREFORE, it is respectfully requested that the

defendants' motion to dismiss the complaint be granted.

ROBERT K. MATCH, M.D.

Sworn to before me this
7th day of June, 1974.

SHIRLEY SHERWIN
NOTARY PUBLIC, State of New York
No. 30-[illegible]
Qualified in Nassau County
Term Expires March 30, 19...

CERTIFICATE OF TYPE OF NOT-FOR-PROFIT CORPORATION

-of-

LONG ISLAND JEWISH-HILLSIDE MEDICAL CENTER

Under Section 113 of the Not-For-Profit Corporation Law.

The name of the corporation is LONG ISLAND JEWISH-HILLSIDE MEDICAL CENTER.

The original name of the corporation was THE LONG ISLAND JEWISH HOSPITAL.

The Certificate of Incorporation was filed by the Department of State on October 20, 1949.

The corporation was formed pursuant to the Membership Corporations Law.

The post office address to which the Secretary of State shall mail a copy of any notice required by law is 270-05 76th Avenue, New Hyde Park, N.Y. 11040.

That under Section 201, it is a Type B Not-For-Profit Corporation as defined in this Chapter.

IN WITNESS WHEREOF, this certificate has been subscribed this 25th day of July, 1973, at the County of New York by the undersigned who affirm that the statements made herein are true under the penalties of perjury.

S/ AARON L. SOLOMON
T/ Aaron L. Solomon, President

S/ LEONARD P. HANOVER
T/ Leonard P. Hanover, Secretary

STATE OF NEW YORK DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS kt
ALBANY

FILING RECEIPT – MISC.

TYPE OF CERTIFICATE
TYPE TYPE B

CORPORATION NAME
LONG ISLAND JEWISH-HILLSIDE MEDICAL CENTER

DATE FILED
SEPT. 19, 1973

FILM NO.
A 101983-2

LOCATION OF PRIN. OFFICE
41 Queens

NOTICE: ADDRESS

FILER AND ADDRESS
HANOWER & BOGIN, ESQS.
122 East 42nd St.
NY,NY 10017

1 DOLLAR FEE TO COUNTY
FEES AND/OR TAX PAID AS FOLLOWS:
[X] CHK. [ ] M.O. [ ] CASH $ 10.

$ 10. FILING
$ TAX
$ CERTIFIED COPY
$ CERTIFICATE

TOTAL $ 10.
REFUND OF $ TO FOLLOW

JOHN P. LOMENZO
SECRETARY OF STATE

R 662-519M

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

JANET GOTKIN AND PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

74 Civ. 584
(Judge Travia)

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, MORTON B. WALLACK, individually and as Director of Brooklyn State Hospital, CHARLES J. RABINER, individually and as Director of Hillside Medical Center, and MARVIN LIPKOWITZ, individually and as Director of Gracie Square Hospital,

Defendants.

----------X

STATE OF NEW YORK)

COUNTY OF NEW YORK) SS.:

BRUCE J. ENNIS, being duly sworn, deposes and says:

1. I am co-counsel for plaintiffs. I submit this affidavit in opposition to the motions of defendants Lipkowitz and Rabiner.

2. After carefully reviewing the Mental Hygiene Law and the regulations and policy manual of the Department of Mental Hygiene, I am convinced that there is very substantial state involvement in the day-to-day operations of "private" mental hospitals, including state involvement in the compilation and dissemination of patient records. That involvement is detailed in the memorandum submitted herewith.

3. Attached hereto is a copy of a letter dated March 11, 1974 to plaintiff Janet Gotkin from an

Associate Administrator of Long Island Jewish - Hillside Medical Center given to me by plaintiff.

BRUCE J. ENNIS

Sworn to before me this
10th day of June, 1974.

NOTARY PUBLIC

ALAN H. LEVINE, Esq.
NOTARY PUBLIC, State of New York
No. 31-2327215
Qualified in New York County
Commission Expires March 30, 1975

LIJHMC

LONG ISLAND JEWISH—HILLSIDE MEDICAL CENTER • P.O. BOX 38, GLEN OAKS, N.Y. 11004 (212) 343-6700

March 11, 1974

Mrs. Janet L. Gotkin
44 Park Trail
Croton on Hudson, N.Y. 10520

Dear Mrs. Gotkin:

We have reviewed your request for a copy of your medical record both with the medical staff here at the hospital and with our attorneys. After a specific review of your medical record and in accordance with hospital regulations we do not feel that we will be able to release your record to you without either a subpoena or court order.

This record, however, can be released to your physician if he formally requests it and accompanies the request with an authorization form signed by you and acknowledged before a Notary Public. The information that we would disclose would be confined to that which is pertinent to the specific goals of the physician who requests this information under your authorization.

If there is anything further I may do to be of assistance please call upon me.

Sincerely,

Robert C. Brice

Robert C. Brice
Associate Administrator

RCB:mg

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, [illegible] individually and as Director of Brooklyn State Hospital, [illegible] individually and as Director of Kingsbrook Medical Center, and MARVIN LIPKOWITZ, individually and as Director of Creole Square Hospital,

Defendants.

REPLY AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS ACTION.

74 C 584

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARVIN LIPKOWITZ, being duly sworn, deposes and says:

Counsel have called to my attention that in the answering brief of the plaintiffs, at page 11, there is a statement, as follows: "There is a fact dispute whether the records will even be given to a physician for a non-treatment purpose, as here, and there is a fact dispute whether the complete record, as opposed to an abstract, will be given to the physician." No such dispute exists with respect to the policy of Creole Square Hospital which I had thought I had made clear in my affidavit, sworn to May 31, 1974, in support of the motion to dismiss the action. There, I indicated that the policy of Creole Square Hospital, while similar to that of the Department of Mental Hygiene, was 'a voluntary one", pursuant to which the Hospital, with the consent of the plaintiff, would turn over to any physician who requested it, a copy of Mrs. Gotkin's entire clinical record and not just an abstract thereof,

unless an abstract is what was requested. The Hospital does request that it be reimbursed for the costs of reproducing the record. In the alternative, the physician may come to the Hospital and examine the record himself and make his own abstract therefrom.

The Hospital's policy does not require that the physician be one who is treating the patient but, simply, that he be a licensed physician.

The policy of Creole Square Hospital is its own policy, dictated by no other institution, including the Department of Mental Hygiene, and it is clearly a reasonable one, designed to protect the interests of all concerned.

Sworn to before me this
15th day of June, 1973.

[illegible]
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

- -x

JANET COTKIN and PAUL COTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, [illegible], Individually and as Director of Creedmoor State Hospital, [illegible], Individually and as Director of Hillside Medical Center, and [illegible], Individually and as Director of Gracie Square Hospital,

Defendants.

- -x

REPLY AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS ACTION.

74 C 584

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT CONRAD, being duly sworn, deposes and says:

I am a member of the law firm of GOLDWATER & FLYNN, attorneys for the defendant IRVIN LIPSCHITZ.

In Point III of the Plaintiffs' Memorandum in opposition to our client's motion to dismiss the action, it is asserted that in so far as our client's motion seeks summary judgment, it should be denied for failure to submit a statement pursuant to Rule 9(g) of the Rules of this Court. A Statement under Rule 9(G) on behalf of our client was served on June 3, 1974, and filed in the office of the Clerk of this Court on June 4, 1974. It now appears that, by inadvertence, the service of copies of the Statement made on June 3, 1974, was made only on the attorneys for the other defendants and not on the attorneys for the plaintiffs. Service of a copy of the Statement was made on the attorneys for

the plaintiffs, by mail, on June 12, 1974. It is evident from the Statement that there is no substantial difference between it and the Statement submitted by the Attorney General on behalf of the State defendants upon their motion for summary judgment; consequently, no prejudice has been suffered by the plaintiffs due to this technical inadvertence.

It is also asserted in Point III of Plaintiffs' Memorandum that our client has not contested the plaintiffs' Statement under Rule 9(g). Rule 9(g) requires no such contest on the part of the movant but, only, on the part of the opposing party.

Sworn to before me this
19th day of June, 1974.

PETER WEISS
Notary Public, State of New York
No. 24-4750510
Qualified in Bronx County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- x

JANET GOTKIN and PAUL GOTKIN, individually and on behalf of all persons similarly situated,

Plaintiffs,

-against-

ALAN D. MILLER, individually and as Commissioner of Mental Hygiene of the State of New York, MORTON B. WALLACH, individually and as Director of Brooklyn State Hospital, CHARLES J. BABINER, individually and as Director of Hillside Medical Center, and MARVIN LIPKOWITZ, individually and as Director of Gracie Square Hospital,

Defendants.

- x

74-C-584

DECISION AND ORDER

July 24, 1974

APPEARANCES:

BRUCE J. ENNIS, ESQ.
New York Civil Liberties Union and
Mental Health Law Project
84 Fifth Avenue
New York, N. Y. 10011

CHRISTOPHER A. HANSEN, ESQ.
Mental Health Law Project
84 Fifth Avenue
New York, N. Y. 10011
Attorneys for Plaintiffs

LOUIS J. LEFKOWITZ, ESQ.
Attorney General of the State of New York
2 World Trade Center
New York, N. Y. 10047
Attorney for Defendants, ALAN D. MILLER,
Commissioner of Mental Hygiene of the State
of New York, and
MORTON B. WALLACH, Director of Brooklyn State
Hospital

SAMUEL A. HIRSHOWITZ, ESQ.
First Assistant Attorney General

MARIA L. MARCUS, ESQ.
Assistant Attorney General
Of Counsel

LIPPE, RUSKIN & SCHISSEL, P.C., ESQS.
114 Old Country Road
Mineola, N. Y. 11501
Attorneys for Defendant, CHARLES J. RABINER,
Director of Hillside Medical Center

MELVIN B. RUSKIN, ESQ.
MICHAEL L. FALTISCHEK, ESQ.
Of Counsel

GOLDWATER & FLYNN, ESQS.
60 East 42nd Street
New York, N. Y. 10017
Attorneys for Defendant, MARVIN LIPKOWITZ,
Director of Gracie Square Hospital

GEORGE KOSSOY, ESQ.
ROBERT CONRAD, ESQ.
Of Counsel

TRAVIA, D. J.

On several occasions between 1962 and 1970, the plaintiff Janet Gotkin was a voluntary mental patient at Brooklyn State Hospital, Long Island Jewish-Hillside Medical Center and at Gracie Square Hospital. The precipitating cause for many of these voluntary hospitalizations was a series of threatened suicide attempts. It is alleged that since September of 1970, the plaintiff Janet Gotkin has not been hospitalized or treated for any mental disorder.

Janet Gotkin and her husband Paul Gotkin, have co-authored a book, which is to be published by Quadrangle Books in late 1974 or early 1975, dealing with Janet Gotkin's experiences with psychiatry and, more specifically, with her medical treatment at the aforementioned hospitals. In an attempt to verify some of the factual data contained in this book /1 and to compare her recollection of certain incidents with the hospitals' version of what had transpired, the plaintiff Janet Gotkin wrote to the various hospitals where she had been treated and requested access to any medical records which might relate to her. Each of these hospitals, however,

/1 The factual data sought by the plaintiff Janet Gotkin included dates of admission, drug dosages, diagnoses, dates of shock treatments and test results.

refused to grant the plaintiff's request.

On April 16, 1974, the plaintiffs, Janet and Paul Gotkin, commenced the instant action, on behalf of themselves as well as on behalf of all other former mental patients who had similarly requested and were denied access to their hospital medical files, against Alan D. Miller (the Commissioner of the New York Department of Mental Hygiene), Morton B. Wallach (the Director of Brooklyn State Hospital), Charles J. Rabiner (the Director of the Hillside Medical Center) /2 and Marvin Lipkowitz (the Director of Gracie Square Hospital). Jurisdiction for the action is predicated upon the statutory provisions of the Civil Rights Act, Title 42 U.S.C. § 1983 and Title 28 U.S.C. § 1343. /3 The gravamen of the plaintiffs' complaint is that the defendants' refusal to grant the plain-

/2 Plaintiffs erroneously named Dr. Rabiner as the Director of the Hillside Medical Center. Actually, the hospital's proper title is Long Island Jewish-Hillside Medical Center and Dr. Rabiner is not its Director, but is rather the Chairman of the Psychiatry Department.

/3 Plaintiffs also refer to Title 28 U.S.C. § 2201 as a basis for jurisdiction. This section, commonly referred to as the "Declaratory Judgment Act," is not an independent grant of jurisdiction in the federal courts; it simply makes available an additional remedy when another jurisdictional predicate exists. See C. WRIGHT, FEDERAL COURTS 449 (2d Ed. 1970).

tiffs access to the requested medical records constituted a deprivation of the plaintiffs' rights under the First, Fourth, Ninth and Fourteenth Amendments to the United States Constitution.

As a consequence of these alleged constitutional deprivations, the plaintiffs request this court to:

(1) determine that this action may proceed as a class action;

(2) issue a judgment declaring that defendants' rules, regulations, customs, policies and practices, under which all former patients are denied the right to examine their own hospital records, are unconstitutional;

(3) issue a preliminary and permanent injunction enjoining the defendants and their agents and successors from enforcing said rules, regulations, customs, policies and practices;

(4) issue a judgment declaring that all former patients have the right upon demand to examine and copy their own hospital records unless within a reasonable time after such demand the person having custody of the records applies for and thereafter obtains a court order denying access to the records; and

(5) issue a preliminary and permanent injunction re-

quiring the defendants immediately to allow the plaintiffs to inspect and copy plaintiff Janet Gotkin's complete hospital records at Brooklyn State, Hillside and Gracie Square Hospitals.

On May 14, 1974, the state defendants, i.e., Alan D. Miller and Morton B. Wallach, /4 made application to this court for an order granting summary judgment in their favor and against the plaintiffs, pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, upon the grounds that there exists no genuine issue of fact to be tried and that they are entitled to judgment as a matter of law. On June 3, 1974, the defendant Marvin Lipkowitz made a similar application for summary judgment and in addition made an alternative motion for the dismissal of the plaintiffs' action, under Rule 12(b)(1) of the Federal Rules of Civil Procedure, on the ground that this court lacks jurisdiction of the subject matter of the present action because the defendant is purely a private person whose actions with respect to the plaintiffs give rise to no federal constitutional rights. Subsequently, the defendant Charles A. Rabiner also moved for a dismissal of the action, pursuant to

/4 Mr. Wallach is the Director of Brooklyn State Hospital, which is classified as a Department of Mental Hygiene facility under Section 7.15 of the New York Mental Hygiene Law.

Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that the facts fail to show that a constitutional deprivation has occurred or that Gracie Square Hospital's actions were under color of state law. /5

From the outset, it should be observed that the plaintiff Paul Gotkin is not a proper plaintiff to this action. Nowhere in the complaint or in the plaintiffs' papers and memoranda has it been alleged that he was ever a mental patient at any of the defendant hospitals. /6 Nor has it been alleged that Paul Gotkin ever requested and was refused access to either his or his wife's medical records. Therefore, it cannot even be asserted that Paul Gotkin is a member of the class he now purports to represent.

The standard for determining whether a Civil Rights complaint should be dismissed is a rather narrow one and the courts have been generally loath to dismiss such an action, unless it appears beyond doubt that the plaintiff can prove

/5 The defendant Rabiner additionally requests this court to abstain from exercising jurisdiction in the present action. Suffice it to say that abstention in Civil Rights actions "may be invoked only in a narrowly limited set of special circumstances," Holmes v. New York City Housing Auth., 398 F.2d 262 (2d Cir. 1968), cert. denied, 400 U.S. 853 (1970), which are not presented herein.

/6 In her letter of October 31, 1973 to the Director of Brooklyn State Hospital, the plaintiff, Janet Gotkin, admits that her husband is not an ex-mental patient.

no set of facts in support of his claim which would entitle him to relief. See Jenkins v. McKeithen, 395 U.S. 411, 422 (1969); Holmes v. New York City Housing Auth., 398 F.2d 262 (2d Cir. 1968), cert. denied, 400 U.S. 853 (1970). Yet, it has been uniformly held that in order to successfully maintain a cause of action under the Civil Rights Acts, a plaintiff must demonstrate: (1) that he has been denied a right, privilege or immunity secured by the Constitution and the laws of the United States; (2) that it was the defendants who subject him to the deprivation complained of; and (3) that the defendants acted under color of state law. See, e.g., Kletschka v. Driver, 411 F.2d 436 (2d Cir. 1969); see also Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 (1970); Johnson v. Capital City Lodge No. 74, Fraternal Order of Police, 477 F.2d 601 (4th Cir. 1973). Therefore, one of the central issues now confronting this court is whether a hospital's refusal to grant a former mental patient access to its medical records constitutes a violation of that former patient's constitutional rights. This question is decidedly one of first impression and since its resolution is pivotal to the plaintiffs' right to proceed here this court will closely scrutinize each of the plaintiffs' claims of constitutional deprivation.

FIRST AMENDMENT CLAIM

Plaintiffs' claim of abridgement under the First Amendment is essentially founded upon a line of Supreme Court decisions which ostensibly recognizes an individual's "right to information and ideas." /7 Although it is beyond cavil that such a right does exist, this court believes that its tenets are totally inapplicable to the facts presented herein.

The "right to receive information and ideas" has always been used as a necessary corollary to the right of free speech. A "speaker's" right to voice his opinions on public and controversial issues without restraint would be an empty freedom if the government could impose restrictions upon his audience's right to hear what he had to say. Thus, in Thomas v. Collins, 323 U.S. 516 (1945), the Court struck down a state law which required the registration of labor organizers before they attempted to recruit union membership. In so holding, the Court explicitly recognized the labor organizer's right to speak and the workers' corresponding right "to hear what he had

/7 Although the plaintiffs' complaint fails to specify which of the many constitutional rights under the First Amendment have been abridged, their Memorandum of Law in Opposition to the Motion for Summary Judgment more clearly delineates under which right the plaintiffs seek protection.

to say." Id. at 534. Similarly, in Lamont v. Postmaster General of the United States, 381 U.S. 301 (1965), the Court found a statute, which permitted the government to hold "communist political propaganda" arriving in the mails from abroad unless the addressee affirmatively requested in writing that the material be delivered to him, to be unconstitutional. The rationale for this opinion stemmed from the unjustified burden the statute placed upon the addressee's right to receive ideas.

Outside the sphere of public or controversial issues, the "right to receive information and ideas" loses much of its vitality and justification. Moreover, the "right to receive information" has never been used by the courts as a constitutional cudgel to compel an unwilling "speaker" to impart information or ideas to any individual who requests him to. As one eminent authority has observed, the "right to hear" has only been recognized in situations where: (1) the speaker is discussing public figures, issues or other matters of social importance; (2) the speaker desires to be heard; and (3) the listeners have been given an opportunity to leave or ignore the speaker. See Forkosch, Freedom to Hear: A Political Justification of the First Amendment, 46 WASH. L. REV. 311

(1971). Thus, plaintiffs' attempt to invoke the "right to receive information" in the context of this case, would seem to be an overly broad extension of the right and an unprecedented interpretation of the First Amendment.

Although not raised by the plaintiffs, a question may still arise as to whether the hospitals' refusal to permit the plaintiffs access to plaintiff Janet Gotkin's medical records was tantamount to a prior restraint of the right to freedom of speech or freedom of the press. This court thinks not. Plaintiffs have already completed the first draft of their book and the defendants in no way have attempted to restrict the content of that book or halt its publication.

FOURTH AMENDMENT CLAIM

Plaintiffs' contention that the defendants' actions violated the Fourth Amendment's proscription against "unreasonable searches and seizures," is, to say the least, a novel argument. Although courts have held that the safeguards of the Fourth Amendment are not wholly confined to criminal actions, see, e.g., Laprease v. Raymours Furniture Co., 315 F.Supp. 716 (N.D.N.Y. 1970), the application of the Fourth Amendment in a civil context has usually been confined to replevin actions where a creditor has repossessed chattels in

the possession of a debtor. The present action is not even remotely similar. Here, possession and ownership of the medical records has always remained with the hospitals and there has been no "seizure" in a constitutional sense. Moreover, even assuming arguendo that the hospitals' retention of their own records is to be construed as a "seizure," it cannot seriously be argued that it was an unreasonable one.

NINTH AMENDMENT CLAIM

Plaintiffs advance the claim that the refusal to permit former mental patients an opportunity to inspect and copy the hospitals' medical records which pertain to them amounted to an intrusion of their "right to privacy" under the Ninth Amendment. Such a claim is patently without merit. This court fails to see how the "right of privacy" is in any way germane to the facts presented herein. It would be an entirely different matter if one of the defendants was attempting to publish material which referred to the plaintiff Janet Gotkin; then, invocation of the Ninth Amendment would have some justification. But such is not the case and this court cannot visualize how the withholding of an undisputably confidential medical record constituted a deprivation of the plaintiffs' right to privacy.

It is possible that the records sought here contain references to and statements by other mental patients, which are entitled to some degree of confidentiality. Given the fact that the plaintiffs' purpose for requesting these records is to publish a book, it is ironic that plaintiffs' success in this action could conceivably violate the very right to privacy which the plaintiffs rely upon.

FOURTEENTH AMENDMENT CLAIM

A more intricate question to be resolved by this court is whether the defendants' actions constituted a deprivation of plaintiffs' property without due process of law. Such a claim is necessarily dependent upon a threshold finding that former mental patients have a property interest in hospital medical records concerning them. The establishment of any property interest is substantially the result of state, rather than constitutional, law. As the Supreme Court in Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972), articulated:

> "Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law-rules or understandings that secure certain benefits and that support claims of entitlement to those benefits."

Therefore, in order to assert a property interest in a hospital record, a former patient must demonstrate some legitimate claim of entitlement to it under state or contractual law.

Turning first to the statutory law of New York, this court is unable to discern a single legislative enactment which even implicitly recognizes a former mental patient's entitlement to hospital records concerning him. The only statute which relates to the disclosure of a mental hospital's medical records, Section 15.13 of the Mental Hygiene Law, would seem to indicate that patients or former patients are precluded from gaining direct access to their records. That section provides:

"§ 15.13 Clinical records; confidentiality

(a) A clinical record for each patient shall be maintained at each facility. The record shall contain information on all matters relating to the admission, legal status, care, and treatment of the patient and shall include all pertinent documents relating to the patient. The commissioner, by regulation, shall determine the scope and method of recording information, including data pertaining to admission, legal matters affecting the patient, records and notation of course of care and treatment, therapies, restrictions on patient's rights, periodic examinations, and such other information as he may require.

(b) The commissioner may require that statistical information about patients be reported to the department. Names of patients treated at out-patient or non-residential facilities and at general hospitals shall not be required as part of any such reports.

(c) Such information about patients reported to the department, including the identification of patients,

and clinical records at department facilities shall not be a public record and shall not be released by the department or its facilities to any person or agency outside of the department except as follows:

1. pursuant to an order of a court of record.

2. to the mental health information service.

3. to attorneys representing patients in proceedings in which the plaintiffs involuntary hospitalization is at issue.

4. with the consent of the commissioner and the consent of the patient or of someone authorized to act on the patient's behalf, to:

(i) physicians and providers of health, mental health, and social or welfare services involved in caring for, treating, or rehabilitating the patient, such information to be kept confidential and used solely for the benefit of the patient.

(ii) other persons who have obtained such consent.

5. with the consent of the commissioner, to:

(i) agencies requiring information necessary to make payments to or on behalf of patients pursuant to contract or in accordance with law, such information to be kept confidential and limited to the information required.

(ii) persons and agencies needing information to locate missing persons or to governmental agencies in connection with criminal investigations, such information to be limited to identifying data concerning hospitalization.

(iii) the firearms control board of the city of New York, when such board has requested information with regard to a named person, pro-

viding such request is accompanied by a certification from such board that the named person has applied to it for a permit or license pursuant to sections 436-6.5 and 436-6.6 of the administrative code of the city of New York.

(d) Nothing in this section shall prevent the exchange of information concerning patients, including identification, between (i) facilities providing services for such patients pursuant to an approved unified services plan, as defined in article eleven, or pursuant to agreement with the department and (ii) the department or any of its facilities. Information so exchanged shall be kept confidential and any limitations on the release of such information imposed on the party giving the information shall apply to the party receiving the information."

The silence of Section 15.13 as to whether mental patients themselves might be entitled to access to their medical files, should not be construed as a tacit legislative imprimatur. Quite the contrary, the statute establishes a general rule of nondisclosure and only permits access to a mental hospital's medical files in a limited number of enumerated situations. Where, as here, a statute makes specific exceptions to its general provisions, the general rule of construction expressio unius personae est exclusio alterius should be invoked and all exceptions not specifically stated in the statute should be excluded. See, e.g., Harnett v. Finch, 321 F.Supp. 1367 (S.D.N.Y. 1971). The propriety of applying this rule of construction to this particular statute

is amply supported by a number of New York cases which have been vigilant in restricting the right of access to a mental hospital's records to only those persons specifically listed in the statute. See, e.g., Greff v. Havens, 186 Misc. 914, 66 N.Y.S.2d 124 (Sup. Ct. N.Y. Co. 1946); Munzer v. State, 41 N.Y.S.2d 98 (Ct. of Claims 1943).

Similarly, the regulations and policy of the New York Department of Mental Hygiene recognize no right of a former patient to gain direct access to his medical records. Departmental policy, however, does permit a former patient to designate any licensed physician to receive the records for him. This procedure, on the one hand, allows a former patient to gain indirect access to his medical files and, on the other hand, it also insures that a licensed medical practitioner will have an opportunity to review the hospital records before turning them over to the former patient. The rationale for not granting the patient direct access to this information is because:

(1) medical records ordinarily include information stated in technical medical terminology which might be misunderstood and misconstrued by an individual not medically trained;

(2) the revelation of some information in a former

patient's record could be detrimental to that individual's current well being; and

(3) information in an individual's medical record often includes references to other individuals, such as relatives, friends or fellow patients, which should remain confidential in order to protect the rights of those other individuals.

It is not material to the issues presented in this case for this court to pass upon the wisdom of such a policy. It is only necessary to note that such a policy does exist. It might, however, be relevant to note that New York is not the only state which permits access to medical records through a "screening mechanism." California, for instance, similarly denies a patient direct access to his medical records but permits him to authorize his attorney to examine and copy all or any part of the record without the necessity of filing suit. In a recent report, by a commission studying medical malpractice, it was observed that:

> "[A] medical record in the hospital or the physician's office is far more than a series of entries reporting diagnoses, doctor's orders and actions taken pursuant to such orders. In the hospital setting the record is a complex of communications between health professionals, including a written history and physical progress notes, nurses' notes, consultations, lab reports, operation summary, discharge summary and the like. During

> the course of a particular hospitalization the record may include a wide spectrum of speculation and observation as the various members of the health team contribute thoughts and observations that lead eventually to the final diagnosis. If not properly explained, many of these entries could be exceedingly disturbing to a patient already apprehensive. However, to deter such entries could often eliminate the very clues that lead to successful diagnosis and treatment.
>
> . . . Also the health teams use a wide variety of abbreviations and phrases that can be both confusing and unintelligible to the layman. For all of these reasons, the patient, though he is entitled to information about his health and his care, needs guidance in understanding and using it. For reasons such as these, many physicians are reluctant to give copies of their records to patients." DHEW, REP. OF SEC.'S COMMISSION ON MED. MALPRACTICE, at 76 (1973) (hereinafter "REPORT"). /8

Turning now to the case law of New York, it should be observed that few cases deal directly with access to a mental hospital's records and that most of the decisions in this state, as well as in other jurisdictions, involve the question of access to medical records generally. Although these latter cases should be examined, their application to the present action may be inappropriate since states have

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/8 Statistically, the overwhelming majority of states do not permit a former patient access to his medical records either directly or indirectly, prior to the maintenance of a suit for malpractice. See DHEW, APPENDIX TO REP. OF SECRETARY'S COMM. ON MED. MALPRACTICE 181 (1973). (hereinafter "APP. TO REPORT.")

traditionally been more protective of the records of mental patients. See APP. TO REPORT at 181. Nevertheless, the state courts of New York have held that medical records are the property of the physician or the hospital and not the property of the patient. /9 As the court stated in In re Culbertson's Will, 57 Misc.2d 391, 292 N.Y.S.2d 806 (Surr. Ct. Erie Co. 1968):

> "This Court is satisfied, however, that records taken by a doctor in the examination and treatment of a patient become property belonging to the doctor. Generally speaking, an individual does not seek out a doctor for the purpose of obtaining records for his personal use, but seeks the personal services of his physician in the area of examination, diagnosis and treatment. The cost of x-rays, cardiograms, etc. and the reports thereon, although paid by the patient, are records supplied to the physician for his personal use in connection with the examination, diagnosis and treatment of the patient. The records and notes that accordingly come into the possession of the physician constitute a history of the case of benefit only to a physician as part of his clinical record concerning a particular patient." 292 N.Y.S.2d at 807-808.

In the Culbertson case a deceased physician had directed in his will that upon his death his executor should burn and destroy all of his medical files. Former patients of the doctor petitioned the court seeking an order (1) compelling the executor to deliver to them their medical records; or

/9 This view would seem to be in accord with the approach adopted in the vast majority of states. Id.

alternatively, (2) permitting them to examine and copy the relevant records. Although the court held that destroying the records would violate public policy, it still refused to grant either of the petitioners' requests for relief. Rather, the court ordered the executor to "make available the records and notes pertaining to the petitioners to the succeeding physician of the petitioners upon the authorized request of the petitioners." Id. at 810.

Implicit in the court's decision to deny the petitioners the relief requested was the court's determination that former patients do not have any claim of entitlement to their records. /10 In reaching this determination, the court quoted at length from the Principles of Professional Conduct, which had been promulgated by the American Medical Association. One of the quoted Principles is excerpted here.

> "4. COPY OF PHYSICIAN'S RECORD TO PATIENT
>
> The Judicial Council does not believe that Chapter II, Section 3 (1955 edition of the Principles) intends or requires that a physician give a copy of his records to his

/10 In their statistical survey of the various states, representatives of the Georgetown University Law Center found that few states recognized the interest of the patient in his hospital records. Id.

> patient. These records are primarily the physician's own notes compiled during the course of diagnosis and treatment so that he may review and study the course of the illness and his treatment. The records are medical and technical, personal and often informal. Standing alone they are meaningless to the patient but of value to the physician and perhaps to a succeeding physician. The patient, however, or one responsible for him, is entitled to know the nature of the illness and the general course or regimen of therapy employed by his physician. The extent to which the physician must advise his patient may be limited by the nature of the illness and the character of the patient. The physician in advising his patient must always act as he would wish to be treated were he in a like situation. (Judicial Council, 1956)." Id. at 809.

Granting a former patient access to medical records without resort to litigation is the exception rather than the rule in an overwhelming majority of our states. As of 1965 only six states had enacted special access laws, permitting a patient to examine and copy his medical records without resort to litigation. See APP. TO REPORT at 181. Once again it should be emphasized that a mental patient's records are viewed in a more restrictive light than are the files of patients in general. Thus, in many of the states where special access laws are in effect, access to a mental

hospital's records is specifically exempted./11

> "Many of these access statutes state that their provisions are inapplicable to the records of mental patients whose records are governed by separate laws and regulations.
>
> Many states are by statute explicitly protective of the confidentiality of the records of patients in state mental institutions. Usually the disclosure of their records is prohibited by law except (1) on the consent of the patient, (2) by consent of the hospital director as necessary for the treatment of the patient, (3) as a court may direct upon determination that disclosure is necessary for the conduct of proceedings before it and that failure to disclose would be contrary to the public interest, and (4) in hospitalization proceedings upon request of the patient's attorney (e.g. Kansas)." APP TO REPORT at 101.

In sum, neither the statutory, administrative nor decisional law of New York recognizes a former patient's entitlement to his medical files in the absence of pending litigation. All of the New York cases upon which the plaintiff rely are inapposite. For example, in Application of Weiss, 203 Misc. 1010, 147 N.Y.S.2d 455 (Sup. Ct. N.Y. Co. 1955), the court held, in the context of a malpractice action, that a

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/11 Illustrative of a state where a distinction is drawn between general medical records and a mental patient's records is the state of Massachusetts. See Shilkman v. Commissioner of Mental Health, 352 Mass. 779, 227 N.E. 2d 477, cert. denied, 389 U.S. 899 (1967); Bane v. Superintendent of Boston State Hosp., 350 Mass. 637, 216 N.E.2d 111 (1967), cert. denied, 385 U.S. 842 (1967).

hospital may not withhold a patient's records to prevent him from discovering the identity of the physicians who treated him. This as well as the other cases cited by the plaintiffs come within an exception which holds that general medical records, held by a hospital, are "discoverable" when the patient has already commenced a personal injuries or malpractice action against the hospital. /12 This exception cannot and should not be extended to apply to the facts presented herein.

In light of the aforementioned discussion, this court concludes that the plaintiffs cannot show a sufficient property interest in the hospitals' medical records which would entitle them to constitutional protection under the Fourteenth Amendment.

/12 In some states this exception has been extended to require a hospital to permit a hospital insurance carrier, armed with the patient-policyholder's authorization, to inspect medical records so that the carrier might determine its liability to the insured. See Pyramid Life Ins. Co. v. Masonic Hosp. Ass'n, 191 F.Supp. 51 (W.D.Okla. 1961); but see Pyramid Life Ins. Co. v. Gleason Mem. Inc., 188 Kan. 55, 360 P.2d 853 (1961). It is interesting to note that the provisions of Section 75.13 of the Mental Hygiene Law permit insurance carriers to obtain the information which was sought in the Masonic Hospital case upon the Commissioner's approval.

CONCLUSION

Plaintiffs contend that this court is precluded from granting summary judgment herein because a great number of factual issues still exist. This court must disagree. There is no dispute as to the underlying facts of this case and all of the alleged controverted issues of fact conjured up by the plaintiffs are simply not material to the outcome of this case. Thus, this court finds that there exists here no genuine issue of fact to be tried and that the defendants are entitled to judgment as a matter of law. Even if this court resolved the purported issues of fact in the plaintiffs' favor, they still would not be entitled to relief. In so holding, this court need not reach the question of whether the private hospitals acted under color of law, since even assuming arguendo that they did, their conduct did not deprive the plaintiffs of any right secured by the Constitution or the laws of the United States.

Since affidavits have been submitted in this case, the applications of the defendants Rabiner and Lipkowitz for dismissal of the action pursuant to Rule 12 of the Federal Rules of Civil Procedure should be construed by this court as motions for summary judgment under Rule 56 of the Federal

Rules of Civil Procedure.

Accordingly, it is

ORDERED that the defendants' motions for summary judgment, granting judgment in their favor as a matter of law, be and the same are hereby granted.

s/ Anthony J. Travia
U. S. D. J.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Deborah Stead , being duly sworn, deposes and says, that on the 4th day of Nov. , 1974, she served the annexed:

JOINT APPENDIX

upon Melvyn B. Ruskin

Attorney(s) for Appellees , by depositing One (1) true copies thereof in a Post Office Box regularly maintained by the Government of the United States and under the care of the Postmaster of the City of New York, in a securely closed wrapper with the postage thereon prepaid, addressed to said attorney(s) at:

Lippe, Ruskin & Schlissel, P.C.
114 Old Country Road
Mineola, New York 11501

Deborah Stead

Sworn to before me this
4th day of November 197

Alan H. Levine

ALAN H. LEVINE, Esq.
NOTARY PUBLIC, State of New York
No. 31-2327215
Qualified in New York County
Commission Expires March 30, 1975

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Deborah Stead , being duly sworn, deposes and says, that on the 4th day of Nov. , 1974, s/he served the annexed: JOINT APPENDIX

upon
Robert Conrad

Attorney(s) for Appellees , by delivering ONE (1) true copies thereof to said attorney(s) at:

Goldwater and Flynn
60 East 42nd St.
New York, New York 10047

BY MINUTEMEN MESSENGER SERVICE
(212) 354-6555

Deborah Stead

Sworn to before me this
4th day of November, 1974

Alan H. Levine

ALAN H. LEVINE, Esq.
NOTARY PUBLIC, State of New York
No. 31-2327215
Qualified in New York County
Commission Expires March 30, 1975

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Deborah Stead , being duly sworn, deposes and says, that on the 4th day of Nov. , 1974, s/he served the annexed: JOINT APPENDIX

upon Maria L. Marcus
Assistant Attorney-General

Attorney(s) for Appellees , by delivering One (1) true copies thereof to said attorney(s) at:

Attorney General of the State of New York
2 World Trade Center
New York, New York

BY MINUTEMEN MESSENGER SERVICE
(212) 354-6555

Deborah Stead

Sworn to before me this
4th day of November, 1974

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